

Geiger Associates Plumbing,  
Heating & Air Conditioning,  
Inc.,  
Plaintiff,  
  
v.  
  
Geiger Services, Inc.  
Defendant.

CIVIL ACTION  
NO. 98-CV-1315

McGlynn, J. May , 1998

## I. Background

Timothy Geiger is president of the plaintiff corporation in this case, Geiger Associates. Geiger Associates is located in Norristown, Pennsylvania and does business primarily in the Philadelphia suburbs. Timothy Geiger's nephew, David Geiger, is president of the defendant corporation, Geiger Services, which is located in Wilmington, Delaware and focuses its business in New Castle County, Delaware and the Pennsylvania suburbs of Wilmington. Both corporations operate in the field of plumbing, heating and air conditioning services. Plaintiff brought this

action to enjoin defendant's use of what plaintiff claims is its common law service mark, the name "Geiger." A preliminary injunction hearing was held on Monday, March 16, 1998. After the hearing, the court urged the parties to remain in the courtroom and try to reach a settlement agreement.

At that point, both parties agreed to allow Timothy Geiger and David Geiger to negotiate out of the presence of their lawyers, a "principals only" meeting. Defendant claims that "the parties expressly agreed, as a condition of going forward with a 'principals' only meeting, that no party would be bound by any negotiations or 'oral agreement' unless and until the parties executed a formal written agreement." Def. Br. at 2-3.

Plaintiff denies that condition existed and asserts that the parties reached an agreement that very night, that the terms of the agreement were memorialized in notes taken by Timothy Geiger, and that defendant's attorney merely stated after the agreement was made, "you have agreed in plumber's language, but I think Joe and I should put this in lawyer's language." Pl. Br. at 11.

The parties were later unsuccessful in producing a mutually-acceptable written agreement. Now plaintiff moves to enforce the settlement purportedly reached on March 16, 1998.

## **II. Discussion**

In Pennsylvania, the enforceability of a settlement agreement is determined according to principles of contract law. Linefsky v. Redevelopment Auth. of Philadelphia, 698 A.2d 128, 132 (Pa. Commw. Ct. 1997). The burden of proving the existence

of a contract lies with the party seeking to establish it. Boyle v. Steiman, 631 A.2d 1025, 1033 (Pa. Super. Ct. 1993). Further, the existence of an oral contract must be established by "clear and precise" evidence. See Gorwara v. AEL Indus., Inc., 784 F. Supp. 239, 242 (E.D. Pa. 1992). "The essential prerequisite for a valid agreement is that the parties mutually assent to the terms and conditions of the settlement." Morris v. Scardaletti, Civ. A. No. 94-3557, 1995 WL 708550, at \*1 (E.D. Pa. Nov. 22, 1995) (citing Main Line Theaters, Inc. v. Paramount Film Distrib. Corp., 298 F.2d 801, 803 (3d Cir. 1962)). However, "when one party has expressed an intent not to be bound until a written contract is executed, the parties are not bound until that event has occurred." Schulman v. J.P. Morgan Inv. Management, Inc., 35 F.3d 799, 808 (3d Cir. 1994).

Plaintiff is correct that a settlement agreement, voluntarily enter into, binds the parties, even in the absence of a writing. Green v. John H. Lewis & Co., 436 F.2d 389, 390 (3d Cir. 1970). What is not clear is whether the parties ever reached settlement in this case. The court has carefully examined the circumstances surrounding the settlement negotiations and the evidence as to what occurred afterwards. As proof that an agreement was made, plaintiff offers the declarations of: (1) Timothy Geiger, president of the plaintiff corporation; (2) Ken Sanderson, general manager of the plaintiff corporation; (3) Paulette Geiger, Timothy Geiger's wife; (4) Dorothy Geiger, Timothy Geiger's mother and David Geiger's

grandmother; and (5) David H. Geiger, Sr., Timothy Geiger's father and David Geiger's grandfather. Timothy Geiger, Ken Sanderson, and Paulette Geiger were witnesses to various parts of the March 16, 1998 negotiations. See Pl. Decls. of T. Geiger, K. Sanderson & P. Geiger. They all declare that a settlement was reached that day, and that it was not conditioned upon the execution of a written agreement. Id. David Geiger's grandparents, Dorothy Geiger and David H. Geiger, Sr., both declare that David Geiger spoke to them on the phone on March 17, 1998 and assured them that the matter between plaintiff and defendant was settled. See Pl. Decls. of Dorothy Geiger & D. Geiger, Sr. Additionally, plaintiff submits the notes taken by Timothy Geiger during the principals only negotiation as proof of the terms of the agreement. Pl. Decl of T. Geiger, Attach. 1.

In response, defendant offers the declarations of David Geiger, president of the defendant corporation, and Mark Aitken, general manager of the defendant corporation, both of whom also witnessed the negotiations of March 16th. Timothy Geiger asserts that before Timothy and David engaged in the principals only meeting, defendant's attorney, Neal Belgam, "stated in front of everyone that [David] would engage in the principals only meeting with the understanding that neither party would be bound by the negotiations or any oral agreement unless and until the parties had executed a formal written settlement agreement." Def. Decl. of D. Geiger at 3. David Geiger states he felt this condition was necessary because there had been a previous dispute with

plaintiff as to whether a settlement agreement existed, and also because David wanted his attorney to review any agreement in order to assure him that it was "legal and workable." Id. He further declares that plaintiff's attorney, Joseph Chovanes, agreed to condition settlement upon the execution of a written agreement. Id. Mark Aitken corroborates David Geiger's assertions. See Def. Decl. of M. Aitken.

With regard to the declarations of his grandparents, David Geiger states, "[m]y grandparents are in their late 70s and 80s and live with my uncle Tim. . . . I did not tell my grandparents that we had reached a 'settlement agreement' and I believe that when they were presented with these affidavits, they did not understand the significance of this statement." Def. D. Geiger's Decl. at 6-7. David Geiger claims that he merely told his grandparents that he and Timothy "had 'patched things up.'" Id. at 7.

In view of the above-mentioned evidence, the court cannot find that an enforceable settlement agreement exists. The negotiations took place directly after a contentious preliminary injunction hearing. See generally Tr. of 3/16/98 Prelim. Inj. H'rg. The only witnesses to what transpired before and after the principals only negotiation between Timothy and David Geiger were employees of the plaintiff and defendant corporations, the corporations' respective attorneys, and the wife of the plaintiff corporation's president. Plaintiff's witnesses vigorously assert that agreement was reached and defendant's witnesses deny that

claim with equal fervor. Because irreconcilable differences as to the crucial events of March 16th require some credibility calls, plaintiff's motion to enforce the settlement is an inappropriate vehicle for resolving the issue. Therefore, the motion will be denied. Counsel may wish to consider an amendment to the complaint seeking enforcement where the issue can be joined and submitted to the appropriate factfinder.

### III. Conclusion

For the foregoing reasons, plaintiff Geiger Associates' motion to enforce the settlement agreement is denied.

#### IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

_____	:	
Geiger Associates Plumbing,	:	
Heating & Air Conditioning,	:	
Inc.,	:	
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	:	
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	:	NO. 98-CV-1315
Geiger Services, Inc.	:	
Defendant.	:	
_____	:	

### O R D E R

AND NOW, this            day of May, 1998, upon consideration of plaintiff Geiger Associates Plumbing, Heating & Air Conditioning, Inc.'s motion to enforce the settlement agreement, and defendant Geiger Services, Inc.'s response thereto, it is hereby

**ORDERED** that plaintiff's motion is **DENIED**.

**BY THE COURT:**

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**JOSEPH L. McGLYNN, JR.,      J.**